

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-99000-smb

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5 In the Matter of:

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7 ADMINISTRATIVE CASE RE: 08-1789 (SECURITIES INVESTMENT

8 ADVERSARY PROCEEDING) ,

9

10 Debtor.

11 - - - - - x

12 Adv. Case No. 08-01789-smb

13 - - - - - x

14 SECURITIES INVESTOR PROTECTION CORPORATION,

15 Plaintiff,

16 v.

17 BERNARD L. MADOFF INVESTMENT SECURITIES, L.L.C.,

18 Defendants.

19 - - - - - x

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1 Adv. Case No. 10-04292-smb

2 - - - - - x

3 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

4 MADOFF INVESTMENT SECURITIES LLC,

5 Plaintiff,

6 v.

7 ROMAN,

8 Defendants.

9 - - - - - x

10 Adv. Case No. 10-05257-smb

11 - - - - - x

12 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

13 MADOFF INVESTMENT SECURITIES LLC,

14 Plaintiff,

15 v.

16 ZRAICK, JR., INDIVIDUALLY AND AS JOINT TENANT, et al.,

17 Defendants.

18 - - - - - x

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1 - - - - - x

2 Adv. Case No. 10-05257-smb

3 - - - - - x

4 IRVING H. PICARD, ESQ., TRUSTEE FOR THE SUBSTANTIV,

5 Plaintiff,

6 v.

7 SHAPIRO et al.,

8 Defendants.

9 - - - - - x

10

11 U.S. Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

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15 February 7, 2017

16 2:02 PM

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23 B E F O R E :

24 HON STUART M. BERNSTEIN

25 U.S. BANKRUPTCY JUDGE

1 Hearing re: 08-01789-smb Conference regarding letter from  
2 Chaitman LLP seeking to appeal order of discovery arbitrator

3  
4 Hearing re: 10-04292-smb Discovery Conference pursuant to  
5 Local Bankruptcy Rule 7007-1(b) (also applies to Adv. P. No.  
6 10-04302)

7  
8 Hearing re: 10-05257-smb Discovery Conference pursuant to  
9 Local Bankruptcy Rule 7007-1(b)

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11 Hearing re: 10-05383-smb Discovery Conference pursuant to  
12 Local Bankruptcy Rule 7007-1(b)

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 THE COURT: Madoff.

3 MR. HUNT: Which matter would you like to hear  
4 Your Honor?

5 THE COURT: Well, why don't we start with the  
6 appeal from the discovery arbitrator's order?

7 MR. HUNT: Dean Hunt and Brian Song for the  
8 Trustee, Your Honor.

9 THE COURT: Okay.

10 MS. CHAITMAN: Helen Davis Chaitman.

11 THE COURT: Go ahead, Ms. Chaitman.

12 MS. CHAITMAN: Thank you. Your Honor, I don't  
13 know if Magistrate Judge Moss intended that the language in  
14 his order, which is Docket Number 14820, places this penalty  
15 on people who can't stipulate to the specific facts about  
16 transfers in their account. But, and I'm focusing on  
17 Paragraph 3 of the order, which reads --

18 THE COURT: I don't have the order. I just have  
19 what you quoted in the letter, but do I need the rest of the  
20 order?

21 MS. CHAITMAN: Oh, I'm -- I don't think so.

22 THE COURT: All right.

23 MS. CHAITMAN: Okay. In adversary proceedings in  
24 which the parties enter into the foregoing stipulation, that  
25 is, they consent to the -- they admit to the deposits and

1        withdrawals -- the defendants need not supplement their  
2        prior answers to the Trustee's interrogatories concerning  
3        the persons or entities that directly or indirectly received  
4        funds withdrawn from the accounts, and the use of those  
5        funds.

6                Now it's kind of a non-sequitur, and I'm not sure,  
7        as I said, I don't know if this is what Magistrate Judge  
8        Moss intended, but there's no basis in the law to punish  
9        someone who can't stipulate to a fact, that is, dispute, in  
10       good faith disputes a fact, to punish that person by saying,  
11       "Well now you're going to have to forego your right to due  
12       process of law, and we're going to allow the Trustee to take  
13       discovery of subsequent transferees."

14               All of the defendants have already produced  
15       evidence of the deposits into their accounts. And the  
16       Trustee has subpoenaed all of the bank records. So there's  
17       no factual dispute that the funds were deposited by Madoff  
18       into the defendant account.

19               But for this order to then require people who  
20       can't stipulate on certain deposits and withdrawals, for  
21       example, you have someone who inherited the account in 2013  
22       because her parents died. She has no personal knowledge and  
23       can't stipulate to something.

24               So now, she has to disclose subsequent  
25       transferees, which the Trustee's not entitled to take



1 discovery of?

2 THE COURT: Well, I think you're mixing up two  
3 things here. The first thing I thought you said is that  
4 people who won't stipulate are, as a general matter, being  
5 punished because they have to answer discovery.

6 MS. CHAITMAN: No, no, no, no. Everyone has  
7 answered discovery. It's just that now the Trustee, because  
8 of this order, the Trustee is taking the position that  
9 people who answered discovery, but didn't answer as to  
10 subsequent transferees, now they have to.

11 THE COURT: Okay. You know, I looked at the, I  
12 guess it was Paragraph 2 in the order, or what was in your  
13 letter.

14 MS. CHAITMAN: Yes. I quoted --

15 THE COURT: And it looked like the stipulation  
16 that the Trustee was looking to, or that the order referred  
17 to was -- were those columns --

18 MS. CHAITMAN: Exactly, the first five columns --

19 THE COURT: All right.

20 MS. CHAITMAN: -- starting on the left of Exhibit  
21 B.

22 THE COURT: And it's saying, as I understood it  
23 from reading this, that if you don't agree with those  
24 figures, then you have to provide the discovery.

25 MS. CHAITMAN: We've already provided discovery.

1 What we have not provided is discovery of subsequent  
2 transferees. We've taken the position throughout, as you  
3 know, painfully, that the Trustee is not entitled to take  
4 discovery in order to frame a complaint against a subsequent  
5 transferee.

6 So we have -- consistently, we've provided all the  
7 discovery we have as to deposits and withdrawals from the  
8 account. However, we're only questioning the Trustee's  
9 right under this order, if indeed that's what the Magistrate  
10 Judge intended.

11 THE COURT: But where is the Trustee? I guess  
12 where is the Trustee's request for subsequent transfer  
13 information?

14 MS. CHAITMAN: Okay.

15 THE COURT: I -- because I don't have the  
16 discovery.

17 MS. CHAITMAN: Okay. So okay, so if you -- every  
18 interrogatory, every set of interrogatories that were served  
19 at least on my clients demands information as to all  
20 subsequent transferees, all people who received money from  
21 the account holder.

22 THE COURT: I am -- I don't recall that being the  
23 request. Do you have a copy of any discovery? Or let me  
24 hear from the Trustee and see what the Trustee's position  
25 is.

1 MS. CHAITMAN: Okay.

2 MR. HUNT: Your Honor, would you -- I have a copy  
3 of the order here, if you'd like to see it.

4 THE COURT: Well, I'm happy to see it. It sounds  
5 like I probably have what I need, but thank you.

6 MR. HUNT: Okay.

7 THE COURT: So Ms. Chaitman is telling me that I  
8 guess whether or not she can stipulate, and in the past  
9 we've talked about certain situations where there can't be a  
10 stipulation, for instance, inter-account transfers, where  
11 the person just doesn't know, that the particular defendant  
12 has given all the information that he, she or it has,  
13 regarding deposits and withdrawals into the subject account  
14 and that unless the defendant is willing to stipulate to the  
15 correctness of all of the Trustee's figures, that defendant  
16 is being forced to disclose subsequent transfer information.  
17 Is that essentially what you're saying?

18 MS. CHAITMAN: Correct.

19 THE COURT: Okay.

20 MR. HUNT: That's not right.

21 THE COURT: Tell me why that's wrong.

22 MR. HUNT: So Judge Moss, just to give you a  
23 little background, he issued this order after a full day of  
24 arbitration on December 13th. And then he amended the order  
25 after an additional hearing on January 5th where he gave the

1 parties the opportunity to review and comment on his order.

2 And I will just point out that Ms. Chaitman, first  
3 of all, never questioning anything in Paragraph 3 of the  
4 order during the January 5th hearing. But I think, if you  
5 look at the order, it's entitled "General Rulings," under  
6 Paragraph A.

7 And I think Ms. Chaitman is simply misreading the  
8 order. There's nothing to appeal in the general rulings of  
9 the order. What it says is, and it's not a punishment, it's  
10 really a gift, if you're able to stipulate to the things in  
11 Paragraph 2, then you don't have to respond to the discovery  
12 items listed in Paragraph 3. That's the gift.

13 If they are able to stipulate, and it doesn't say  
14 that they have to say they specifically received it, it just  
15 means that they don't contest columns 1 through 5 of Exhibit  
16 B of our complaint. So that's a gift.

17 THE COURT: I think -- yeah, but what she's saying  
18 is that some of the areas in Paragraph 3 seem to relate to  
19 subsequent transfers.

20 MR. HUNT: I disagree with that, but I don't think  
21 it matters, because if you're unable to stipulate, then  
22 Judge Moss directs you to Paragraph 4. And Paragraph 4 says  
23 you're supposed to meet and confer about remaining discovery  
24 issues, areas where you can stipulate and if you can't  
25 agree, then come see me again and we'll work it out. That's

1 all it says. There's no forcing anybody to do anything.

2 THE COURT: Have you met and conferred on these?

3 MR. HUNT: Yes, Your Honor, as a matter of fact,  
4 on the three cases that were involved in this order, as I  
5 said, we spent an entire day of arbitration -- and if you  
6 look at the order, you can see that we're -- Ms. Chaitman  
7 was able to stipulate in the (indiscernible) client case,  
8 were able to cover a lot of ground and reduce the number of  
9 interrogatories they had to respond to and so forth.

10 But where she was unable to ultimately stipulate  
11 in (indiscernible) and Benjamin, there are still some  
12 remaining issues. And if you look at the December 13th  
13 transcript of our arbitration which was attached to our  
14 pleadings -- I apologize if you don't have it. I've got a  
15 copy.

16 THE COURT: No, I have it, but what page?

17 MR. HUNT: But anyway, what we told Judge Moss was  
18 that we would just defer any discussion on certain  
19 interrogatories pending resolution of Ms. Chaitman's  
20 internal discussions with her clients as to whether or not  
21 they could stipulate to what was in Paragraph 2.

22 So the way the order works is, we're now down to  
23 Paragraph 4, and we'll need to go back to Judge Moss. And  
24 he, you know, was very aware of the issues regarding  
25 subsequent transfers. And I'll tell you, the one thing that

1 the transcript on December 13th says, and it's crystal clear  
2 because I'm the one that said it on the record, is I need to  
3 know who got the initial transfers. That's all I need to  
4 know. And that's the position we have taken in front of  
5 Judge Moss, absolutely, every single time we've talked to  
6 him.

7 THE COURT: Ms. Chaitman, I'm being told that if  
8 you can't stipulate, then you have to meet and confer, you  
9 don't have to produce anything at this point.

10 MS. CHAITMAN: Okay, and --

11 THE COURT: And if then if there's an area of  
12 dispute, such as subsequent transfers, which is the area  
13 you've raised, you're supposed to go back to Judge Moss  
14 under the order and say, "Here's why I don't think I have to  
15 produce this stuff."

16 MS. CHAITMAN: Okay. If the Trustee -- we have  
17 letters from the Trustee in a case that was not submitted to  
18 Judge Moss, where the Trustee -- we answered written  
19 discovery, the Trustee deposed the witness for four hours,  
20 and every deposit and withdrawal was discussed at length and  
21 documents relating to every deposit and withdrawal were  
22 discussed and after Magistrate Judge Moss' ruling, I  
23 received a letter from the Trustee's counsel saying, "You  
24 now have to answer as to all of the subsequent transferees."  
25 And that is not a case which was where the clients have

1 agreed to go to Judge Moss. So there were certain cases  
2 that did go to Judge Moss.

3 THE COURT: All right, but I'll deal with that  
4 case in the event there's a dispute as to that particular  
5 case, but we're just talking about this order now. And I'm  
6 being told that if you don't want to stipulate, nobody says  
7 you have to stipulate --

8 MS. CHAITMAN: Right.

9 THE COURT: -- to anything, then you're supposed  
10 to meet and confer on specific interrogatories, and I  
11 recognize you can't stipulate in some circumstances.

12 MS. CHAITMAN: Right.

13 THE COURT: Then you're supposed to meet and  
14 confer as to specific interrogatories or requests for  
15 admission.

16 MS. CHAITMAN: Okay, but as I understand it --

17 THE COURT: And if you can't agree, then you go  
18 back to Judge Moss.

19 MS. CHAITMAN: But as I understand it, the Trustee  
20 has now said that they're not seeking information about  
21 subsequent transferees. Therefore, any transfer from the  
22 account holder would not be discoverable.

23 THE COURT: Well, I don't read this as a ruling  
24 that you have to answer. I read it sort of as just taking  
25 it off the table if you stipulate, then you don't have to

1 talk about it any further.

2 But, you know, we've been through the subsequent  
3 transfer issue many times before. I dismissed the  
4 subsequent transfer claims. As a general matter, you don't  
5 have to answer subsequent transfer information. On the  
6 other hand, I took another look at your affirmative  
7 defenses, which I assume are the same in every case, and  
8 some of them do raise the issue of the use of the proceeds.

9 MS. CHAITMAN: For certain purposes.

10 THE COURT: For certain purposes. But unless  
11 you're prepared to say, these are the relevant subsequent  
12 transfers I used to pay taxes or whatever the issue is, then  
13 the Trustee is entitled to the information.

14 MS. CHAITMAN: Okay --

15 THE COURT: So it's kind of the same thing you've  
16 been talking about for two years now.

17 MS. CHAITMAN: Okay, but if --

18 THE COURT: So what I would suggest you do is if  
19 you can't stipulate for whatever reason, then you meet and  
20 confer on a case-by-case basis, and as I said, as a general  
21 matter you can't get subsequent transfer information. On  
22 the other hand, provided that you identify those subsequent  
23 transfers which are relevant to the defense, and no other  
24 subsequent transfers are relevant. And then he's entitled  
25 to the information relating to those subsequent transfers.



1 MS. CHAITMAN: And we have done that, Your Honor.

2 THE COURT: All right.

3 MS. CHAITMAN: We've been providing all of the  
4 information about the tax payments.

5 THE COURT: I don't know if you have or you  
6 haven't, but the point is, you're supposed to be negotiating  
7 this out.

8 MS. CHAITMAN: Okay.

9 THE COURT: You're meeting and conferring first,  
10 and then, with respect to the matters that are covered by  
11 Judge Moss' order, which everybody had a chance to review,  
12 go back to Judge Moss on it.

13 MS. CHAITMAN: Okay.

14 THE COURT: If something isn't referred to Judge  
15 Moss and you want me to deal with it, then I'll deal with  
16 it.

17 MS. CHAITMAN: Okay.

18 THE COURT: All right? So it's not really an  
19 appeal from his order, because there's nothing that compels  
20 you to do anything of this order.

21 MS. CHAITMAN: Okay.

22 THE COURT: All right?

23 MS. CHAITMAN: All right. Do you want to deal  
24 with the Romans?

25 MR. HUNT: Thank you, Your Honor.

1 THE COURT: Okay. I'll just make a note of this.

2 MR. SHIFRIN: Good afternoon, Your Honor, Max  
3 Shifrin and Ted Jacobs at the --

4 THE COURT: All right, let me just make a note of  
5 what just occurred. Okay. Go ahead, I'm sorry.

6 MR. SHIFRIN: Good afternoon, again, Your Honor.  
7 Max Shifrin on behalf of the Trustee. I'm here with my  
8 colleague Ted Jacobs.

9 As the Court was aware, the Trustee's application  
10 in this case relates to the defendant's assertion of work  
11 product objections over communications between the  
12 defendants and/or Ms. Chaitman on the one hand, and Bernard  
13 Madoff on the other.

14 Now under any conceivable scenario, Your Honor,  
15 those communications are either, A, not work product at all,  
16 or B, work product that has been deliberately,  
17 affirmatively, and selectively waived under the case law.

18 Now as a preliminary matter, Your Honor, the  
19 requests seek communications that presumably pre-date Ms.  
20 Chaitman's retention as counsel in this case.

21 THE COURT: Can I ask you something? What does  
22 this have to do with the Roman case, though?

23 MR. SHIFRIN: Well, Your Honor, the Roman case is  
24 part of the case wide deposition efforts that Ms. Chaitman  
25 has spearheaded -- spearheading, excuse me. And --

1 THE COURT: So what does that have to do with the  
2 adversary proceeding involving the Romans? That's what --  
3 it wasn't clear. This had to do with the Picower sentence  
4 and the (indiscernible) affidavit?

5 MR. SHIFRIN: No, Your Honor, Ms. Chaitman has  
6 placed the fraud in dispute in this case. Fraud is an  
7 element of our claims in the adversary proceedings. And  
8 therefore --

9 THE COURT: You mean whether or not it was a Ponzi  
10 scheme or when it began or --

11 MR. SHIFRIN: That's right. And that's what Ms.  
12 Chaitman has been challenging for the last half a year.

13 THE COURT: And what are the communications that  
14 you're seeking? What do they relate to?

15 MR. SHIFRIN: Well, we don't know what  
16 communications that defendants or Ms. Chaitman have, but we  
17 think that any communications between Ms. Chaitman and/or  
18 the defendants and Mr. Madoff relating to BLMIS are  
19 discoverable under Rule 26 and can be used for --

20 THE COURT: Wait a minute. Communications between  
21 Ms. Chaitman and her clients are discoverable?

22 MR. SHIFRIN: No, no, no. Communications between  
23 Ms. Chaitman and Mr. Madoff or the Romans and Mr. Madoff.

24 THE COURT: Why would -- why wouldn't Ms.  
25 Chaitman's communications be work product? Putting aside

1 Roman's communications?

2 MR. SHIFRIN: Well, Your Honor, for purposes of  
3 this conference, let's assume that whatever was actually  
4 sent to Mr. Madoff was work product.

5 THE COURT: Right.

6 MR. SHIFRIN: Under the relevant case law, the  
7 fact that it was shared with Mr. Madoff constitutes a  
8 waiver. Mr. Madoff is not some consultant or agent. He is  
9 --

10 THE COURT: But, you know, I know, but this is  
11 like Hickman v. Taylor. You're going -- you don't get the  
12 attorney's notes. You go and take deposition of the person  
13 they spoke to.

14 MR. SHIFRIN: Your Honor, respectfully, the case  
15 law, particularly the SEC v. Gupta case, which was the 2012  
16 decision decided by Judge Rakoff, effectively, and in a fact  
17 pattern that mirrors the facts here, decided that the  
18 defendant in that case that was moving to compel was  
19 entitled to anything that was discussed between the  
20 plaintiff and a third party witness in the days and weeks  
21 leading up to a deposition.

22 THE COURT: No, but I thought you said if Ms.  
23 Chaitman spoke to Mr. Madoff in preparing her case.

24 MR. SHIFRIN: That's right.

25 THE COURT: You're saying you're entitled to that?

1 MR. SHIFRIN: I think we're -- we are entitled  
2 under the Gupta case, to any communications that relate to  
3 BLMIS in preparation of the declaration that she submitted  
4 in the PW hearing case.

5 THE COURT: Notwithstanding work product?

6 MR. SHIFRIN: Notwithstanding work product. And I  
7 have copies of the case here --

8 THE COURT: I'm not going to read it now. So  
9 there's -- how did Judge Rakoff deal with the work product  
10 issue?

11 MR. SHIFRIN: Well, for purposes of that case, it  
12 was presumed that it was work product.

13 THE COURT: Right.

14 MR. SHIFRIN: But the issue was waived. The fact  
15 that -- and in that case, SEC was the plaintiff and they  
16 were working with Lloyd Blankfein in connection with a third  
17 party deposition that was set to take place. Leading up to  
18 that deposition, they had several meetings with Mr.  
19 Blankfein, and the defendants in the subsequent definition -  
20 -

21 THE COURT: Who had several meetings with the --  
22 Mr. Blankfein?

23 MR. SHIFRIN: The SEC and the US Attorney's  
24 office. The defendants in that case, Mr. Gupta, in a  
25 deposition, asked Mr. Blankfein about his communications

1 with the US Attorney's office, his communications with the  
2 SEC, what was discussed.

3 THE COURT: Was the SEC a party to this  
4 litigation?

5 MR. SHIFRIN: Yes, it's SEC v. Gupta. And the  
6 defendants moved to compel when the government refused to  
7 make that information available and Judge Rakoff handed down  
8 the decision that said this was a clear waiver.

9 Mr. Blankfein was a third-party witness. He had  
10 no interest, common legal interest with the defendant in  
11 that case and the government made the voluntary, deliberate  
12 and selective effort to make that information available.  
13 And that was enough to find a waiver in that case. And I  
14 think those facts mirror the facts here. So the same  
15 results should obtain. And again, Your Honor, I have five  
16 copies that I can give them to you.

17 THE COURT: I'm not going to rule on this one  
18 today.

19 MR. SHIFRIN: Okay. Your Honor, that -- to us,  
20 that's the crux of the issue. Waiver -- even if we assume  
21 that everything was work product, which we, as I said  
22 before, dispute. But if we assume that it's work product,  
23 it -- all of it was waived by virtue of it being shared with  
24 Mr. Madoff. And we're happy to brief that for you further,  
25 if that's what the Court requires.

1 MR. JACOBS: May I clarify one point, Your Honor,  
2 before Ms. Chaitman speaks, I apologize. We're only seeking  
3 written communications that were shared explicitly with Mr.  
4 Madoff. We're not seeking Ms. Chaitman's mental impressions  
5 or notes that she may have made and not shared. And we're  
6 also not seeking any attorney client communications between  
7 Ms. Chaitman and her client.

8 THE COURT: Maybe -- let me hear your response.  
9 I'm not going to rule on this today, but go ahead.

10 MS. CHAITMAN: Okay. You may recall, Judge, that  
11 I served a document demand on the Trustee, and asked him to  
12 produce his notes of his communications with various Madoff  
13 employees about Madoff's operation. And the Court ruled  
14 that that was work product and there was no way I was  
15 getting it.

16 THE COURT: It sounds like you should've made the  
17 motion that they're going to make there.

18 MS. CHAITMAN: I should. Right. Well --

19 THE COURT: Look, you're going to have to make a  
20 motion to compel discovery on this one. This one, just my  
21 initial reaction is that it's work product. Now the -- what  
22 you're looking for is a little more refined than what it  
23 sounded like in the letter, because I thought you were  
24 looking for notes of all communications and things like  
25 that. And I'll read, you know, the Judge Rakoff's case, and

1 anything that you have to provide in response.

2 MS. CHAITMAN: Okay. I'd like to just inform the  
3 Court that I have been told by the client that there are no  
4 communications with Madoff, except for the communications  
5 with which Your Honor may recall, were made in connection  
6 with Mr. Madoff's declaration.

7 And at that time, Your Honor, I had submitted to  
8 you in camera, but not to the Trustee, a few documents that  
9 contained my communications with my client, as to why I was  
10 seeking Mr. Madoff's declaration.

11 And those were -- those -- that was my work  
12 product, and those are the only documents of which I'm  
13 aware, that are responsive to this request. And Your Honor  
14 has those documents, if you'd like me to provide them  
15 sealed.

16 THE COURT: I recall them. You know, I don't know  
17 if that satisfies the trustee or if he's looking for  
18 something new.

19 MR. JACOBS: Well, certainly those particular  
20 documents, Your Honor, would be discoverable, pursuant to  
21 our request in the case law --

22 THE COURT: You have those, right?

23 MR. JACOBS: We have them.

24 MS. CHAITMAN: No, I did not. As I said in my  
25 papers, I was submitting through to you in camera. I was



1 not providing them to the Trustee.

2 THE COURT: Okay, all right.

3 MS. CHAITMAN: I think that that's what prompted  
4 this.

5 MR. JACOBS: Well, that's true, Your Honor, and  
6 certainly, those particular written communications between  
7 Madoff and Ms. Chaitman are discoverable. They're relevant  
8 to -- or Mr. Madoff's testimony, concerning the fraud, and  
9 Ms. Chaitman's challenge of the fraud, in which she is  
10 exclusively, at this juncture, relying on Mr. Madoff's  
11 testimony.

12 They're also impeachment evidence that go to Mr.  
13 Madoff's credibility. So those certainly would fall under  
14 our application. But they're also made an additional --

15 THE COURT: Mr. Madoff's credibility?

16 MR. JACOBS: I'm sorry?

17 THE COURT: Mr. Madoff's credibility, you're  
18 questioning it?

19 MR. JACOBS: Absolutely, we're questioning it,  
20 Your Honor. But Your Honor, the Court has allowed his  
21 deposition to go forward. We resisted that, on the basis of  
22 his credibility, but it's happening, so we're entitled to  
23 defend ourselves against that testimony.

24 THE COURT: You're going to have to make a motion  
25 to compel discovery. Make it clear what it is you're

1 looking for and if it's limited to certain things, then make  
2 that clear, also.

3 MR. JACOBS: Okay.

4 THE COURT: You may be talking about a very small  
5 universe of documents. I don't know.

6 MR. JACOBS: We absolutely are, Your Honor. And  
7 just to reiterate, and to address Ms. Chaitman's concerns,  
8 this is not like her application for our work product  
9 concerning interviews. We're not interested in that.

10 THE COURT: That one's not before me now.

11 MR. JACOBS: Right.

12 THE COURT: Let's deal with what's before me.

13 MR. JACOBS: I'm just -- absolutely, Your Honor,  
14 thank you.

15 THE COURT: All right, okay. So you'll make a  
16 motion to compel on that one. Thank you. Next is Zraick?

17 MR. RICH: Good afternoon.

18 THE COURT: Good afternoon.

19 MR. RICH: May it please the Court, Robert Rich,  
20 Hunton & Williams, LLP on behalf of Edward A. Zraick Jr., et  
21 al. These are four individual defendants with net alleged  
22 liability of \$285,000.

23 We're here on a request to extend our deadline to  
24 serve a rebuttal witness report by approximately 30 days.  
25 And this is with respect to what I'm going to call the

1 Dubinsky report.

2 It's an expert report served on us by the Trustee  
3 on November 16. As we had discussed in a chambers  
4 conference at the end of December, though we had not had the  
5 Madoff transcript at that time, the Madoff deposition made  
6 clear that this expert report was highly defective.

7 And we've, since that time, have been able to  
8 confirm that with several bond traders, and had been racing  
9 to produce a rebuttal report to say the same. We had hoped  
10 at the time of our conference to work with joint counsel,  
11 although, you know, just given the different discovery  
12 deadlines in each case, getting a report by our deadline was  
13 difficult.

14 And so, these defendants scraped together enough  
15 money to retain their own rebuttal witness and to submit a  
16 report as soon as possible. Given the stakes here, you  
17 know, I also think it's appropriate to consider a uniform  
18 discovery and briefing schedule on this issue.

19 THE COURT: Is this part of the when did the Ponzi  
20 scheme begin issue??

21 MR. RICH: I think you can call it that.

22 THE COURT: Let me ask Mr. Murphy because we  
23 haven't fixed a discovery schedule with that, and that's a  
24 common issue that pervades all the cases.

25 MR. MURPHY: We have not, Your Honor --

1 THE COURT: Pervades a lot of them. I shouldn't  
2 say all of them.

3 MR. MURPHY: We have not, Your Honor, and that's  
4 not something present before the Court.

5 THE COURT: No, but I'm saying, are we talking  
6 about discovery that goes to that issue?

7 MS. CHAITMAN: May I be heard, Your Honor?

8 THE COURT: No.

9 MS. CHAITMAN: Okay.

10 THE COURT: Is that what we're talking about? I  
11 don't know what the Dubinsky report --

12 MR. MURPHY: This is the rebuttal expert report  
13 with respect to Mr. Dubinsky.

14 THE COURT: It -- but is Dubinsky opining on when  
15 the Ponzi scheme began?

16 MR. MURPHY: Your Honor, he does talk about the  
17 fraud, Your Honor, and what took place in that fraud, yes.

18 THE COURT: How does the report relate to these --  
19 this case? What's the relevance of the report to this case?

20 MR. MURPHY: Dubinsky relates to all the good  
21 faith cases, Your Honor, at a minimum, and he talks about  
22 how the fraud was conducted in the documents that he looked  
23 at, to verify that.

24 MR. RICH: Your Honor --

25 MR. MURPHY: So it's relative to all the good

1 faith cases, Your Honor.

2 THE COURT: Yeah, but that -- if he looked at all  
3 the documents, then that's relevant to each of those cases.  
4 But my question is really a broader question, whether or not  
5 the Dubinsky report is going to -- is it going to be used to  
6 argue when the Ponzi scheme began?

7 MR. MURPHY: Yes, I think it will, Your Honor.  
8 There are portions of that that will be used for that.

9 THE COURT: Okay. And there's been no schedule  
10 set for expert reports in that particular proceeding, right?  
11 You're just taking Madoff's deposition.

12 MR. MURPHY: There have been no provisions for  
13 that, Your Honor.

14 THE COURT: What I'm getting at, this aspect of  
15 the case, if there's a dispute when the Ponzi scheme began  
16 in these -- in this particular case, and that's part of the  
17 broader omnibus dispute, isn't it?

18 MR. MURPHY: Your Honor, let me just clarify  
19 something, too. This decision -- this issue, regarding the  
20 1992 start of the Ponzi scheme, Madoff has at least admitted  
21 --

22 THE COURT: Right.

23 MR. MURPHY: -- at least since 1992, he was  
24 conducting a Ponzi scheme. If you recall, back in the time  
25 when these defendants were asking for Mr. Madoff's

1 deposition, at that hearing, we produced a report by Mr.  
2 Greenblatt. He did an analysis of all the cases that were  
3 going before you at the time, to see whether if the fraud  
4 started in 1981 or earlier, of whether the fraud started in  
5 1992, made a difference to different defendants.

6 According to that declaration, Your Honor, which I  
7 have with me today, it makes no difference to the fictitious  
8 profits to these defendants.

9 THE COURT: Okay.

10 MR. MURPHY: So I would submit to you that it  
11 doesn't -- it's not relevant.

12 THE COURT: Okay. So what -- so then, what is it  
13 relevant to? I don't have the report, so I'm just asking,  
14 what is it relevant to, in order to gauge what he has to  
15 respond to?

16 MR. RICH: Your Honor, I would ask that they  
17 stipulate to that, if that's -- if we could eliminate a  
18 large section. He just said he's not worried about the  
19 period --

20 THE COURT: Are you prepared to stipulate that in  
21 this case, the Ponzi scheme began on January 1st, 1992?

22 MR. MURPHY: I am not, Your Honor, and I'll tell  
23 you why. I know you've asked me before on that, Your Honor,  
24 but defendants have now -- certain defendants, other  
25 defendants in this case have since --

1 THE COURT: Just in this case.

2 MR. MURPHY: I don't know where they're going with  
3 this, Your Honor. They make --

4 THE COURT: You just told me it doesn't matter.

5 MR. MURPHY: Defendants have made new arguments  
6 with respect to 1992. After they found that out, that it  
7 may not make a difference at all, I think they take a  
8 different view about whether the 1992 date matters at all or  
9 not. It's very difficult to pin them down to -- on a  
10 particular argument, so it can't suggest to you that for  
11 purposes of this argument, that it only started in 1992.

12 THE COURT: I guess I don't understand that.  
13 These are fictitious --

14 MR. MURPHY: There are defendants, Your Honor --  
15 excuse me -- there are defendants --

16 THE COURT: -- transferees.

17 MR. MURPHY: -- Your Honor, who suggest that even  
18 if the fraud started in 1992, then they are seeking a  
19 different calculation of their net equity, based on a  
20 different date than what the trustee would use.

21 THE COURT: A different date for the start of the  
22 Ponzi scheme?

23 MR. MURPHY: Correct.

24 THE COURT: But if both of you stipulate that the  
25 Ponzi scheme began on January 1st, 1992, then does it matter

1 in this particular case? I understand that there are other  
2 disputes with other defendants.

3 MR. MURPHY: These defendants, Your Honor, are  
4 pre-1992. They have inter-account transfers, I believe, or  
5 prior accounts, I should say. I'm not clear. I'll think  
6 about it for a moment, if you would, whether if they  
7 stipulate to the Trustee's netting. And if they stipulate  
8 to the calculation of the ins and outs, and they stipulate  
9 to their liability in the amount of approximately \$285,000,  
10 based on that --

11 THE COURT: But --

12 MR. MURPHY: -- then I don't know. Maybe that  
13 works, but I'm not sure.

14 THE COURT: Are there post-1992 inter-account  
15 transfers?

16 MR. RICH: No, Your Honor, and there are other  
17 issues post-1992. You know, we -- our learning evidence --

18 THE COURT: So what do you -- I don't understand  
19 what the Dubinsky report is going to be used to prove in  
20 this particular case.

21 MR. RICH: Your Honor, the Dubinsky report, it  
22 states basically that there was very few trades, no trades  
23 going on in the IA business, what they're focusing on.

24 THE COURT: Right.

25 MR. RICH: Basically, testifying that based on



1 what he looked at, it is impossible for any trades to have  
2 been made pre-'92, post-'92. It's completely debunked, both  
3 by Madoff --

4 THE COURT: But the only issue in your cases is  
5 whether there were trades made with your accounts.

6 MR. RICH: Well, there were certainly trades made  
7 in our accounts.

8 THE COURT: I'm not going to -- let me put it  
9 another way. I'm not going to hear that there may have been  
10 an actual trade in some other person's account. That's --

11 MR. RICH: We believe that all of the trades, all  
12 -- pretty much all of the convertible bond trades were  
13 actual trades that happened.

14 THE COURT: In your client's account?

15 MR. RICH: Mine and probably most of the  
16 customers.

17 THE COURT: Well, but I'm not talking about most.  
18 I'm not going to try somebody else's case.

19 MR. RICH: Okay. But we -- I understand. We have  
20 trade records at Madoff that show bonds being traded in our  
21 accounts. There is nothing to suggest that those didn't  
22 happen.

23 THE COURT: So why can't you -- why couldn't you  
24 have gotten an expert that said, "These were real trades"?  
25 You know, whatever happened in other accounts, we're

1 interested in what happened in your account.

2 MR. RICH: You, Your Honor, you can't -- with  
3 these trades, the only records that exist are of Madoff's.  
4 Those are the only things. You can maybe try to find the  
5 counterparty. Other than that, there's really no way to  
6 confirm that a trade happened.

7 THE COURT: So what is your expert report going to  
8 say?

9 MR. RICH: He's going to say the methodology that  
10 Mr. Dubinsky used to say that it is impossible for these  
11 trades to have been made, because he based it on the price  
12 and the volume, that methodology is completely flawed.

13 He is basically saying, I looked at the New York  
14 Stock Exchange and some industry reports in the '80s that  
15 said, "Well, the bonds traded between 120 and 140." Here,  
16 you have a record of your bond trading at \$118. It is  
17 impossible for that trade to have been made.

18 THE COURT: Right.

19 MR. RICH: That is completely bogus. The -- I  
20 understand that these bonds are traded, the highest volume  
21 of the account. In the '80s, there was no required  
22 reporting. The New York Stock Exchange was less than one  
23 percent or something --

24 THE COURT: So why couldn't you have gotten an  
25 expert to say that?

1 MR. RICH: Your Honor, I -- we've discovered this  
2 through the Madoff deposition. We've been searching for an  
3 expert. We tried to work with joint counsel --

4 THE COURT: I thought you told me you had an  
5 expert. I mean, that -- in chambers.

6 MR. RICH: We did. We have a -- we had an expert  
7 that other defense counsel retained, but we had different  
8 deadlines to submit a rebuttal or a report, making it  
9 difficult for our -- for him to focus on our case.

10 We had to go out, retain our own expert, which we  
11 did, scrape together the money. We just needed a little  
12 more time to submit it. Now you also mentioned an omnibus  
13 proceeding about this. I wasn't aware that there was  
14 already --

15 THE COURT: We talked about this when we were  
16 talking about Madoff's deposition, didn't we, in June or  
17 July? That's what it related to. You were a participant in  
18 that?

19 MR. RICH: Yes. And we've formally requested an  
20 extension of fact discovery, and we've tried to use it and  
21 they've objected in the letter.

22 THE COURT: That's a separate proceeding with  
23 other participants. It's a meeting on its own.

24 MR. RICH: Well, Your Honor, if you're telling me  
25 that I can submit a report on an extended deadline --

1 THE COURT: I didn't say that. I didn't say  
2 anything. You know, I fixed a deadline, and now you're  
3 coming back and you're saying, "I need more time. I need  
4 more time." And all you really need is someone to say that  
5 the methodology is wrong, because for the reasons you just  
6 told me, these trades aren't reported. I don't know why you  
7 need more time.

8 MR. RICH: It -- Your Honor, like I said, we had  
9 to find the right person. We had -- it was a very lengthy  
10 Dubinsky report we needed to review. We needed to formally  
11 retain it and get the money to do so. It wasn't very long,  
12 that we were, you know, before Your Honor on this issue.

13 THE COURT: But this issue has been in the case, I  
14 mean, the case management order was entered and notified in  
15 April. I think this issue's been in the case for almost a  
16 year now.

17 MR. RICH: Well, I didn't know what was going to  
18 be served on us on November 16th. He could've served on us  
19 a lot earlier.

20 THE COURT: Oh okay.

21 MR. RICH: -- if that's what they want to do in  
22 the case.

23 THE COURT: Okay, all right. So you got it  
24 November 16th and what did you do since then?

25 MR. RICH: Well, you know, we have been trying --

1 we have been reviewing the thousands of pages of expert  
2 reports, which became much more clarified after we received  
3 the transcript of the Madoff deposition in very late  
4 December.

5 After reading that, it helped us, you know, we  
6 thought discovery was supposed to have been completed. Once  
7 we had that, we were armed with the knowledge of where to  
8 look, of why the -- this report was so flawed, and have  
9 since raced to get an expert to say the same.

10 It's amazing that after all this time, they  
11 actually don't know what happened at Madoff Securities for  
12 decades. It's unfathomable, really.

13 THE COURT: Well, I think if you asked them,  
14 they'll say he just made it all up.

15 MR. RICH: And but, they based that on things that  
16 we're going to show are completely flawed.

17 THE COURT: Didn't Madoff admit that he made it  
18 all up?

19 MR. RICH: He did not. We have transcript and he  
20 in --

21 THE COURT: I thought I read his allocution. He  
22 said he ran a Ponzi scheme.

23 MR. RICH: In a very detailed testimony, he was  
24 able to tell us, you know, what happened. And I submit to  
25 the Court that once the fact-finder sees how detailed his

1 testimony is, plus corroborated by our experts, that it will  
2 become clear, the extent to which Madoff made securities.

3 He was also testified and come clear that he held  
4 a lot of treasury bills and other securities for the  
5 customers' accounts post-'92. Once they --

6 THE COURT: Did he ever allocate them to the  
7 customer's accounts?

8 MR. RICH: You know, we've requested discovery on  
9 that point, and he's -- and they've objected to it. And  
10 that's why I bring up our request, which is on the docket at  
11 Docket Number 60 for an extension.

12 THE COURT: All right. This is a conference, I  
13 granted you one extension, I'm not inclined to grant you  
14 another. If you want to make a motion to modify the pre-  
15 trial order to prevent manifest injustice, you can go ahead  
16 and do it, but I'm not inclined, having given you one  
17 extension, this matter has been on surface at least since  
18 November.

19 You're telling me you need an expert to opine on  
20 something that doesn't sound like there's a lot to opine on,  
21 other than that Dubinsky didn't do it right for the  
22 following five reasons.

23 MR. RICH: Your Honor, this is a very specific  
24 security that only bond-traders need to understand. We went  
25 through people who've tried to go through conflicts.

1 THE COURT: So you put all that in the motion, but  
2 you're going to have to make a motion to modify the pre-  
3 trial schedule based on a showing of manifest injustice.  
4 Because I've already given you an extension, which you  
5 requested more or less on the last day, when your last  
6 report, when your rebuttal report was due.

7 And you know, I think if I give you another  
8 extension, you're going to come back in 30 days asking for  
9 more time. So --

10 MR. RICH: Your Honor, I have an expert, he's  
11 retained, he's --

12 THE COURT: What's his name?

13 MR. RICH: Bill Feingold with Hillside Advisors.  
14 He wrote the book on his convertible bond trades.

15 THE COURT: All right, yeah. As I said, you'll  
16 have to make a motion for the reasons that I've stated.

17 MR. RICH: Your Honor, can I ask the extent to  
18 which the omnibus proceeding, with respect to when the fraud  
19 started is -- I can submit this report in that proceeding?

20 THE COURT: You'll have to discuss it with the  
21 Trustee. And if there's a dispute, you can raise it. I  
22 don't think any time has been fixed for that, but it doesn't  
23 sound like it matters in your case. So why would you want  
24 to submit it?

25 MR. RICH: I guess I'm not clear that that issue

1 is what I'm talking about, the extent to which Madoff has  
2 made actual trades.

3 THE COURT: It sounded like your -- I guess from  
4 your letter, that that's what the -- one of the issues was,  
5 but now I'm being told it doesn't matter. I don't know if  
6 that's correct or not, but that's what I'm being told.

7 MR. RICH: Your Honor, I'm not sure if you wanted  
8 to address it at this conference, but we do have a pending  
9 request on the docket for fact discovery extension on issues  
10 that relate to Madoff's deposition at Docket Number 60. It  
11 hasn't been --

12 THE COURT: That fact discovery. I thought I just  
13 extended discovery solely for this deposition.

14 MR. RICH: Your Honor, the Trustee clearly  
15 objected to my fact discovery, which was rela --

16 THE COURT: Because it's beyond the discovery  
17 cutoff. Right.

18 MR. RICH: It -- well, it is, Your Honor, but we  
19 filed a timely request for an extension, which had -- which  
20 the Trustee has not responded to, and we've not --

21 THE COURT: Do you want to grant them an  
22 extension?

23 MR. MURPHY: No, Your Honor.

24 THE COURT: It's a no to grant you an extension.

25 MR. RICH: I'm requesting it from Your Honor. We



1 -- I already knew that they denied it.

2 THE COURT: You'll have to make a motion. I'm not  
3 inclined to grant it. I remember this issue coming up at  
4 the last minute. People wanted to take Mr. Madoff's  
5 deposition to -- right at the close of the discovery  
6 deadline, as I recall. Wasn't it very close to the close, I  
7 said, okay, I'll extend it just for this?

8 And I think I even said, "Don't come back and tell  
9 me now that you've learned something from Mr. Madoff's  
10 deposition that you want even more discovery of other people  
11 because you could've taken that deposition, you know, five  
12 years ago, six years ago, whatever it was.

13 MR. RICH: Your Honor, I have a slightly different  
14 recollection. We requested the extension at the same time  
15 as we did the Madoff, and you did say you were not granting  
16 any extensions at that point.

17 THE COURT: Right.

18 MR. RICH: And that parties should need to file  
19 their separate requests, which we went ahead and did.

20 THE COURT: Right. Look, I'm not inclined to  
21 grant an extension. You have to prepare your case in a  
22 timely manner. You could've taken Madoff's deposition eight  
23 years ago. And you didn't do it. And you came at the last  
24 minute with a couple of other people, and you said, "Now I  
25 want to take the deposition." There was an objection

1 because it was -- either the time had run or it was about to  
2 run.

3 And I remember we had a cutoff. For everybody  
4 who's time had run, that couldn't participate in the  
5 deposition, that you got your request in before the  
6 termination of your fact discovery, which I think was true  
7 in your case. You could take his deposition, but I'm just  
8 not inclined to continue to rollover these deadlines.

9 You could have taken his deposition a long time  
10 ago. And the fact that you discovered something six months  
11 after the discovery cutoff doesn't lead me, doesn't incline  
12 me to extend the discovery now for other people. You can  
13 finish the Madoff deposition and then I think we're done,  
14 subject to whatever happens with this expert rebuttal issue,  
15 all right?

16 MR. MURPHY: Thank you, Your Honor.

17 THE COURT: Next is Shapiro.

18 MR. ROLLINSON: Good afternoon, Your Honor, James  
19 Rollinson here with Torello Calvani on behalf of the  
20 plaintiff, Mr. Picard.

21 THE COURT: Go ahead.

22 MR. ROLLINSON: Good afternoon, Your Honor. We  
23 are here today on a Rule 7007 conference regarding the  
24 Shapiro family's responses to the Trustee's discovery  
25 requests. As Your Honor may recall, the Trustee's case

1 against Mr. Shapiro and his family is not your typical case.

2 In this case, the Trustee has alleged and  
3 specifically alleged that Mr. Shapiro called Mr. Stanley  
4 Shapiro, Mr. Shapiro going forward, had actual knowledge  
5 that no securities were being traded in his family's  
6 accounts.

7 The Shapiro family filed a motion to dismiss.  
8 That motion was largely denied, although we do acknowledge  
9 that certain claims were dismissed by Your Honor in  
10 connection with that motion.

11 And so, obviously, the Trustee has a fairly high  
12 burden in this case, of proving actual knowledge. And our  
13 discovery that we issued to this Shapiro family was targeted  
14 to the issue of Mr. Shapiro's knowledge and control over  
15 these accounts.

16 It was also directed obviously to proof of receipt  
17 of transfers as well. I want to start by saying, going  
18 forward, we're not directing our discovery at certain of the  
19 dismissed claims.

20 Certainly, the 502(d) claims were dismissed. The  
21 subsequent transfer claims were dismissed. And in the  
22 exhibit that we provided with our letter, we tried to  
23 identify in column one in that chart, just all the various  
24 requests that we put out there, notwithstanding the  
25 objections from the Shapiro family, we acknowledge that

1 those particular issues are of no relevance in this case,  
2 due to the dismissed claims.

3 We also have a number of our claims, or excuse me,  
4 our requests that were directed specifically at receipt of  
5 transfers. We've tried, with the Shapiro family, to enter  
6 into stipulations. We know how Your Honor pushes the  
7 parties to attempt to reach stipulations as it relates to  
8 receipt of transfers.

9 As we left it back in early, mid-December,  
10 actually, after several meet and confers on that issue with  
11 Mr. Lax and Mr. Miller. We have not heard from them in  
12 regards to our latest request for a stipulation, as it  
13 relates to receipt of transfers.

14 And so, therefore, we feel these requests are  
15 still relevant. Obviously, if we reach a stipulation and  
16 certain of our requests will not be relevant anymore.

17 So there remains a number of our requests that  
18 relate to highly relevant both documents and requests for  
19 admissions, specifically targeted at Mr. Shapiro's  
20 knowledge, his control of these accounts, all that are live  
21 issues.

22 Even though, some of the defendants, particularly  
23 his two children, Leslie Citron and David Shapiro, have been  
24 dismissed out of certain claims. I think there are only  
25 right now subject to count one for the two year transfers in

1 connection with a couple of the accounts.

2 We addressed certain discovery to them, as it  
3 relates to claims that we still have pending against their  
4 father. And so, with the meet and confers that we did have  
5 with counsel on the other side, we basically identified two  
6 issues in connection with the Shapiro family's objections to  
7 our requests.

8 One is the -- the first is whether they can launch  
9 sort of the blanket objection. They claim that certain of  
10 our requests are too broad, that in a certain request,  
11 although we're seeking certain relevant information, some of  
12 it is irrelevant, so we then have to break out a specific  
13 request into -- specific to defend and specific to accounts.

14 We invited them to provide us any authority during  
15 our last meet and confer on December 7th. We followed up  
16 with a letter on December 14th. You know, our position is  
17 that you have to respond to the request, and if you object  
18 to a portion of it, object to a portion of it.

19 But if you don't object to a certain part of it,  
20 under the Rule 34b2c, you have to then respond to that part  
21 of it. And we didn't hear from the Shapiro family, but  
22 actually, the most recent, after our last meet and confer,  
23 the last time we heard from them was last night at 11  
24 o'clock or so, when they submitted a responding letter to  
25 our January 11th letter on that.

1           So we attempted to try to narrow the issues. We  
2           attempted to see if they would consent to have this matter  
3           heard before Judge Moss, which they, you know, did respond  
4           to us on that, saying that they wouldn't consent. But we've  
5           tried to engage them on this issue. It seems as if we just  
6           can't reach a consensus.

7           THE COURT: Okay.

8           MR. ROLLINSON: And then, the other issue broad  
9           category is as it relates, do we have -- does the Trustee  
10          have the ability to ask Leslie Shapiro, who's subject just  
11          to the two-year clawback claim, can we ask her about  
12          information relating to her father and her father's  
13          activities?

14          And we believe we have the ability to do that.  
15          Certainly, we could go outside the parties involved in this  
16          case through Rule 45 and ask a third party, who has no  
17          connection to this case, other than having relevant  
18          information, I hope, to weigh in on that. And we have the  
19          right to conduct discovery of that outside party through  
20          Rule 45.

21          So that's where we are. The one thing that I  
22          think it's important for Your Honor to know in connection  
23          with all of this is there is a bit of a history between the  
24          parties that in 2009 and '10, before we filed, we did  
25          conduct Rule 2004 discovery with the Shapiro family, former

1 counsel before Lax & Neville got involved, Akin Gump was  
2 representing the family then, produced 7,800 pages of  
3 documents from the Shapiro family.

4 We've told Mr. Lax and Mr. Miller we're not  
5 looking for them to reproduce those documents. We're only  
6 asking for anything above and beyond that, that they've  
7 produced. We had fairly broad categories of documents that  
8 we sought through prior counsel.

9 And so, if you get down to proportionality, which  
10 is now the standard, we actually, if they didn't object to  
11 anything and there was a fairly marginal production, that  
12 wouldn't come as a shock to us.

13 THE COURT: But if they didn't object, we wouldn't  
14 be here, would we?

15 MR. ROLLINSON: That's right. But had their  
16 production been slim, it wouldn't be a shock, because we  
17 really don't feel that there are too many documents out  
18 there. So even though they may claim that it's over broad  
19 or it's unduly burdensome, they really hadn't backed that up  
20 with anything, quite frankly, and we don't expect there's  
21 too much burden when we start looking at proportionality.

22 THE COURT: Well, I mean, you know, they may have  
23 to do that to make a motion to compel. But they have the  
24 burden of showing the burden, really.

25 MR. ROLLINSON: That's correct. And that's where

1 we might be ultimately, Your Honor.

2 THE COURT: All right.

3 MR. ROLLINSON: I have nothing further.

4 THE COURT: Let me hear from the Shapiros or the  
5 defendants.

6 MR. MILLER: Robert Miller of Lax & Neville for  
7 the defendants, my colleague, Lisa Catalano. I do think  
8 that there are two broad issues, although I dispute the way  
9 they were characterized.

10 The first are a request in this initial category,  
11 as Mr. Rollinson said. The Trustee won't be directing  
12 certain discovery of certain parties, because the claims  
13 against them have been dismissed.

14 We're not talking about a few requests on those  
15 subjects. And it's not clear whether they're just talking  
16 about subsequent transfers or some of the questions about  
17 imputing knowledge to Ms. Citron or David Shapiro, Stanley  
18 Shapiro's children, which was, you know, a theory that Your  
19 Honor rejected.

20 There are dozens upon dozens of requests on those  
21 subjects, and it's only in the course of this process that  
22 they've started discussing sort of vaguely backing off from  
23 some of those.

24 It's important to note, the case against Stanley  
25 Shapiro is distinct from the general good faith cases, but



1 not Stanley Shapiro's family. And I think that's where the  
2 first issue arises from.

3 Mr. Shapiro is here on counts that reach back  
4 decades and are about his actual knowledge of the Ponzi  
5 scheme, but Mr. Shapiro, Citron is not, and Mr. Shapiro,  
6 David Shapiro is not.

7 THE COURT: Well, I guess we'll just have to go  
8 through each of the requests, but the argument is being made  
9 that they have the right to ask Leslie Citron, for example,  
10 about what her father may have known. And the fact that  
11 claims were dismissed against her, except for the two-year  
12 claims, doesn't matter. If she knew that in 1990, her  
13 father knew that Madoff was a fraud. They can certainly ask  
14 her that.

15 MR. MILLER: And I think that's a little distinct  
16 from the issue of claims that could've been dismissed. I  
17 think that there's --

18 THE COURT: I read through some of the stuff and I  
19 agree with you that some of these requests look like they're  
20 trying to impute knowledge to Leslie Citron going back. Her  
21 knowledge is irrelevant anyway on the two-year transfers.

22 On the other hand, some of these do seem to relate  
23 to what Mr. -- what her father knew, going back. And she  
24 can certainly be asked that. If she doesn't know, then she  
25 says she doesn't know.

1 MR. MILLER: I think it -- that reaches the second  
2 issue, which is primarily on the request for production,  
3 although I would say, if there were a request for admission  
4 among the 63 that were served to David Shapiro or the 69  
5 that were served to Leslie Shapiro, Citron, it's simply  
6 asked, did Stanley admit that Stanley Shapiro knew in 1998  
7 that there was a Ponzi scheme or in 2000, that there was a  
8 Ponzi scheme?

9 THE COURT: These are requests for admissions?

10 MR. MILLER: These are requests for admissions.  
11 It's likely that I can't say now how we would've  
12 (indiscernible), but it's likely that Ms. Citron would not  
13 have objected to that kind of request.

14 The problem is, particularly in the request for  
15 production, that the Trustee's requests are, in many cases,  
16 enormously overbroad. They reach back decades and decades.

17 THE COURT: Why don't we go through the requests,  
18 because it's hard to talk about these in general terms? Why  
19 don't we start -- I think the first tab you had in your  
20 requests for the conference Exhibit B were requests for  
21 admissions from Leslie Citron?

22 MR. MILLER: Is that Exhibit B?

23 MR. ROLLINSON: It is, yes.

24 THE COURT: So let me get your chart out. You say  
25 that 21 through 42 are in dispute. First of all, there's a

1 phrase here, portfolio account. What -- I didn't know what  
2 that meant, because I didn't have the definitional section  
3 from your requests?

4 MR. ROLLINSON: Sure, Your Honor. We  
5 distinguished that from the split strike account, so the  
6 portfolio account is the one that was held by Mr. Shapiro  
7 and his wife as Trustees of the Trust for her benefit. It's  
8 SH30. But we just called that the portfolio account, so  
9 that --

10 THE COURT: So that's the trust account?

11 MR. ROLLINSON: That's correct. And the split  
12 strike account, in this instance, would be SH171.

13 THE COURT: That's her personal account?

14 MR. ROLLINSON: That's her personal account to  
15 which, again, she's subject to the two-year clawback.

16 THE COURT: Okay, thank you. All right, so I  
17 think Number 21 is -- so why do you think 21 is irrelevant?

18 MR. MILLER: Again, I think Ms. Citron was  
19 dismissed on everything but the two-year claims. And as the  
20 Trustee's aware, she's willing to pay the two-year claims  
21 today.

22 THE COURT: But he's -- but this account, the  
23 portfolio account is the account that Stanley Shapiro is  
24 liable for since 2001 or 2002.

25 MR. MILLER: It's the Leslie Shapiro Trust.

1 THE COURT: So it's certainly relevant what went  
2 in and what came out, isn't it?

3 MR. MILLER: I think as far as -- first of all, I  
4 think that that question could be handled by the  
5 stipulations. The parties have been back and forth on that  
6 question, and hopefully will --

7 THE COURT: I'm being told that it's still in  
8 dispute, but --

9 MR. MILLER: There's a dispute over the language  
10 in the stipulation.

11 THE COURT: As a general proposition, as long as  
12 the account itself is still in dispute or generally Stanley  
13 Shapiro's liability, with respect to the account is still in  
14 dispute, the money that was deposited, the money that was  
15 withdrawn, and what he knew about BLMIS are all relevant,  
16 even if the particular defendant who's asked that question  
17 is no longer in the case.

18 MR. MILLER: I think as is the case with many of  
19 these requests, the problem is that as phrased, it requires  
20 Leslie Citron to go back decades and decades to a Trust that  
21 was founded when she was a child, and that has no bearing on  
22 any claims against her. It's not -- in fact, it's not  
23 asking about Stanley Shapiro's knowledge.

24 THE COURT: Well, but if she's a witness in the  
25 case, even if she were never a party in this case, and she

1 knew relevant information, you know, you're arguing it's a  
2 big burden. I don't know if it's a big burden. I don't  
3 know if she even still has the records.

4 MR. MILLER: She would have to go looking for  
5 them.

6 THE COURT: Well, where would she look?

7 MR. MILLER: Well, she could -- I mean, she's  
8 moved multiple times from New York, there are storage  
9 facilities, there are -- you know, there's a -- the problem  
10 with many of these requests is that she has to go back and  
11 perform this search.

12 And you know, this -- in terms of the Leslie  
13 Shapiro Trust, it was founded when she was, you know, a  
14 child. It's 35, 40 years ago. She's also asked for all the  
15 documents relating to the --

16 THE COURT: You know, I -- the one thing that when  
17 I read this, I questioned the evidentiary value, and she  
18 admitted this, that doesn't bother Mr. Shapiro. So what's  
19 the evidentiary value of an admission from her that no money  
20 was deposited in the portfolio account?

21 MR. ROLLINSON: It's certainly probative,  
22 particularly if he claims ignorance, and the person who's  
23 the beneficiary of that account can say, "Yeah, I agree.  
24 There was nothing deposited in that." I can't say that it's  
25 a slam dunk, Your Honor. I would rather have him admit it.

1 MR. MILLER: But I think that Mr. Rollinson could  
2 examine Ms. Citron on her father's knowledge, but here,  
3 we're talking about, I think a strategic attempt to get  
4 information from Ms. Citron.

5 THE COURT: Well, he's just -- he just wants to  
6 confirm that more money went in, because he's interested in  
7 the money that came out. It just allows him to make a  
8 mathematical calculation of what the exposure of liability  
9 is. But you know, my response is, it's certainly relevant.

10 It sounds to me like you're saying, maybe it's  
11 relevant, but it's marginally relevant, given the burden of  
12 what's involved, you shouldn't have to do it. So it's --

13 MR. MILLER: That's correct. If it's -- we don't  
14 necessarily admit that it's relevant. Again, as Your Honor  
15 said, because it doesn't have probative value.

16 THE COURT: Well --

17 MR. MILLER: To establishing --

18 THE COURT: I agree with you that a Leslie Citron  
19 admission about that account probably isn't going to bind  
20 Stanley Shapiro. But you know, if you made the motion to  
21 compel discovery, I'd probably grant a protective order on  
22 something like this.

23 It's minimal probative value. I'm not ruling on  
24 it, I'm just -- you know, it's minimal probative value, but  
25 whatever she answers isn't going to bind Stanley Shapiro.

1 And since the theory is that Stanley Shapiro is in charge of  
2 the account and he's giving the directions regarding the  
3 trading or the record manipulation in the account, then he's  
4 the appropriate person to answer that, since he's the guy  
5 you're trying to hold liable for that account, and maybe  
6 others. I don't know who else the Trustees (indiscernible).

7 MR. MILLER: Well, I think that this is,  
8 particularly I've just checked, I've cross referenced the  
9 same request to Stanley Shapiro, admit that between January  
10 1st, 1990 to December 11, 2008, a total of \$3,037,500 was  
11 withdrawn from the portfolio account, which Stanley Shapiro  
12 has admitted. And so --

13 THE COURT: So what are you (indiscernible) in  
14 this Court? If he's admitted it and he's the defendant on  
15 that, really the target defendant on that charge.

16 MR. ROLLINSON: I would agree with that, Your  
17 Honor. I mean, I didn't cross reference every one of these  
18 --

19 THE COURT: Why don't you do that? Maybe if you  
20 sat down -- if you all would go through every one of these  
21 today, and maybe those will be resolved more quickly, once  
22 we establish some ground rules. But if Mr. Miller has to  
23 cross reference or show you every one where you've got to --  
24 you got the answer you needed from the person you really  
25 needed it from, there's no reason to press.

1 MR. ROLLINSON: Yeah, I will just add, there are a  
2 number of responses, if we get there, on Mr. Shapiro's end -  
3 -

4 THE COURT: All right, (indiscernible) --

5 MR. ROLLINSON: -- when he says that, "My  
6 daughter's no longer subject to the relevant claim in this  
7 case, and so, I'm not answering that."

8 THE COURT: I'm not saying there aren't  
9 variations.

10 MR. ROLLINSON: Sure.

11 THE COURT: But let's go through them. Next is  
12 22. It's the same. We just did 22, didn't we? These are  
13 the withdrawals from the account now. Did Mr. Shapiro admit  
14 that nothing went into the portfolio account?

15 MR. MILLER: Let me make sure before I answer.

16 MR. ROLLINSON: He did do -- admit --

17 THE COURT: Yeah, you know, I have a suggestion.

18 MR. ROLLINSON: It's at 70 --

19 THE COURT: Rather than do it this way, why don't  
20 you, Mr. Miller, show him, since you've obviously done it  
21 anyway, show him, you could check off on your chart, if you  
22 want, where he got the corresponding admission from the  
23 person he presumably would know and the person who's  
24 knowledge he wants? And maybe, we can hone down this  
25 dispute? Maybe understanding that anything that relates to



1 Stanley Shapiro's knowledge is fair game, regardless of who  
2 has that knowledge, and even if it relates to a request to  
3 Mrs. Citron.

4 If it's focusing on Stanley's knowledge, then he's  
5 entitled to ask it, even if it's, you know, it's Stanley --  
6 obviously, I'm being flip, but if Stanley said to Leslie in  
7 1990, "You know, this Madoff's a big fraud, but I'm going to  
8 continue investing," you know, that's a classic example of,  
9 it's relevant for any period of her liability, but it's  
10 certainly relevant to the case.

11 MR. MILLER: I think I understand, Your Honor's  
12 point.

13 THE COURT: Now there are a couple of others I  
14 noticed, and maybe this is a (indiscernible). I was looking  
15 at Stanley Shapiro's response, I think (indiscernible).  
16 Okay. This is Stanley -- this is your Exhibit C, and it's  
17 Stanley Shapiro's responses.

18 And let's take -- you know, there's a few of  
19 these. So if you look at Number 66, first response, admit  
20 that between March 1st, 2003, and December 11th, 2008, a  
21 total of \$4 million, whatever, was withdrawn from this flood  
22 strike account. My first question is, isn't this the  
23 account that's no longer part of the case?

24 MR. ROLLINSON: It is, but only subject to the  
25 two-year liability and --

1 THE COURT: Okay.

2 MR. ROLLINSON: -- it's to your point, Your Honor,  
3 we need (indiscernible) --

4 THE COURT: Okay, okay. And that's admitted. And  
5 then, the next question is, had Leslie Citron received it?  
6 What difference does it make, whether she received it, if  
7 the money is withdrawn, and they admit it? This was her  
8 account, right?

9 MR. ROLLINSON: That's correct.

10 THE COURT: So you -- are you concerned that it  
11 was withdrawn by somebody else and paid to somebody else,  
12 and if so, would that make a difference?

13 MR. ROLLINSON: It could make a difference, Your  
14 Honor. It's -- it encompasses the last two years of that  
15 period as well, and it just goes frankly to the math, Your  
16 Honor. This is the --

17 THE COURT: Did you ask Leslie Citron the same  
18 question?

19 MR. ROLLINSON: I did.

20 THE COURT: And how did she answer it?

21 MR. ROLLINSON: She was -- she said that it's not  
22 relevant, is my recollection.

23 THE COURT: Let me ask a question. With respect  
24 to at least Leslie Citron, is she prepared to admit that all  
25 of the withdrawals from the Split Strike account were

1 fictitious profits within the two years?

2 MR. MILLER: I believe, and I can flip to it, I  
3 believe what she admits, is that within the two year period,  
4 she admits to the amount withdrawn, yes. I think that what  
5 we're talking about beyond the two-year period of claims  
6 that have been dismissed. That are (indiscernible) against  
7 anyone.

8 THE COURT: So she admits, and you know, she's got  
9 a very limited exposure left in this case. If she admits  
10 that all of the withdrawals within the two years, the Split  
11 Strike account were fictitious profits, and I guess she  
12 received it, to the extent that's an issue, do you need  
13 anything more from her, on her liability?

14 MR. ROLLINSON: On her liability, no, Your Honor.  
15 And that was part of our back and forth for the stipulation.

16 THE COURT: All right.

17 MR. ROLLINSON: And we left it with them back on  
18 December 14th.

19 THE COURT: Okay.

20 MR. ROLLINSON: And we didn't hear anything, and  
21 it kind of forced our (indiscernible).

22 THE COURT: And she's willing to admit that, that  
23 cuts away a lot of discovery leads. Not all of them, by any  
24 means, because you know, Stanley Shapiro, and I guess his  
25 wife, are involved in this case all the way back. But it

1 will reduce the amount of discovery from Leslie Shapiro  
2 about -- Leslie Citron, about what she got, and out of her  
3 accounts.

4 MR. MILLER: Looking at it just very quickly, Your  
5 Honor, I think she does admit there's -- there are multiple  
6 questions dealing with withdrawals from the Split Strike  
7 account in the two years. I believe she does admit to all  
8 of them.

9 THE COURT: Does she? Where?

10 MR. MILLER: Well, it's, for example, there's  
11 Number 65.

12 THE COURT: Are we back on B?

13 MR. MILLER: This is -- yeah, this is Leslie  
14 Shapiro Citron.

15 THE COURT: 65?

16 MR. MILLER: Yeah, 65. October of 2008.

17 THE COURT: Oh, these are the various -- does she  
18 admit they're fictitious profits? And was the question  
19 asked about that?

20 MR. MILLER: I'm not sure that the question was  
21 asked of her.

22 THE COURT: Okay, all right. So my offer remains.  
23 Do you want to go through every one of these now? Or, Mr.  
24 Miller, do you want to tell -- show him where somebody else  
25 has answered the question, somebody who is in a better

1 position to answer it?

2 MR. MILLER: I think we can get together and fix a  
3 big part of the problem.

4 THE COURT: All right. And again, anything  
5 relating, you know, I'm repeating myself, but anything  
6 relating to Stanley Shapiro's knowledge, because he's the  
7 key to the imputation, is relevant, even if it goes back  
8 many, many years, even for a period, but that --  
9 particularly (indiscernible), it may be liable for any  
10 withdrawals, okay?

11 MR. MILLER: I think we've objected to certain  
12 requests that we consider burdensome and how far they go  
13 back and what would be required, particularly in document  
14 (indiscernible) --

15 THE COURT: Well, document requests, but if -- I  
16 understand that, but I don't know how burdensome it'll be,  
17 and that will ultimately be your burden to show, if they  
18 have to make a motion.

19 MR. MILLER: We understand.

20 THE COURT: I'm not just going to accept, you  
21 know, it's burdensome. You're going to have to explain why,  
22 where they are, and what it's -- what's involved in looking  
23 for it.

24 MR. MILLER: We understand that, Your Honor.

25 THE COURT: All right. Do you want me to adjourn

1 this one?

2 MR. ROLLINSON: That's fine, Your Honor. I guess  
3 that the question is, is whether we should come back to you  
4 in --

5 THE COURT: Well, if you tell me you've resolved  
6 it, you know, you don't need me next time, but if you do  
7 want to come back, I want to know what the area of dispute  
8 still -- your chart was very helpful. To the extent issues  
9 have been eliminated, that's fine, but I'd like to know what  
10 the area --

11 MR. ROLLINSON: Sure, we're certainly willing to -  
12 -

13 THE COURT: Let me go back to your letter, you  
14 brought in the broad areas, and I realized that's your  
15 characterization of dispute, and you have a different  
16 characterization of dispute. One other area, I noticed you  
17 were asking -- and this may have been with Stanley Shapiro,  
18 I don't know if it was with Leslie Citron or her brother.

19 Stuff relating to communications with Koningsberg,  
20 for example, and it doesn't say that relate to Madoff. It  
21 just -- you know, they say that Stanley Shapiro has known  
22 Koningsberg for many years. And they may have been  
23 scheduling golf dates for all --

24 MR. ROLLINSON: Yeah, in 29, this is on --

25 THE COURT: Which Tab?

1 MR. ROLLINSON: It will be Tab F, Your Honor.  
2 Request Number 29. If you're there, it's Page 11 of 18,  
3 Dock ID 73-7.

4 THE COURT: (indiscernible) --

5 MR. ROLLINSON: And Exhibit F --

6 THE COURT: I have that on Page 10.

7 MR. ROLLINSON: It is Page 10, correct. I'm  
8 sorry. I'm looking at the pagination of how it was filed.  
9 Number 29 talks about communications --

10 THE COURT: Well, I was talking about Number 28.

11 MR. ROLLINSON: 28.

12 THE COURT: "All documents concerning your  
13 relationships, social or otherwise, with Paul Koningsberg or  
14 any employee of Koningsberg, Wolf & Company." That sounds  
15 pretty broad.

16 MR. ROLLINSON: Well, I think it's a --

17 THE COURT: If they don't relate to Madoff or  
18 taxes or things like that --

19 MR. ROLLINSON: Well, I would agree with you  
20 wholeheartedly, if Mr. -- if we didn't allege Mr.  
21 Koningsberg was in the middle of this scheme to back date  
22 trades. In fact, he was indicted and pled guilty to  
23 manipulating trades, including some that relate to Mr.  
24 Shapiro.

25 THE COURT: So why can't you just ask for all the

1 documents relating to trading records, back dating records,  
2 requests for trading records, taxes, things like that? Just  
3 you asked for everything.

4 MR. ROLLINSON: Well, I think, Your Honor, to the  
5 extent they had a personal relationship, that's certainly  
6 probative. It's relevant.

7 THE COURT: I'm not so sure.

8 MR. MILLER: I think if read literally, this would  
9 include -- this is our problem with many of these requests.  
10 If read literally, this would include, you know, ticket  
11 stubs for movies that they saw. That's a document relating  
12 to their social relationship.

13 THE COURT: It might include a bar mitzvah  
14 invitation too, you know.

15 MR. MILLER: Which is not very likely, so --

16 MR. ROLLINSON: Well, if he can tell me his burden  
17 is to go through thousands and thousands of ticket stubs --

18 THE COURT: Well, he doesn't have to do anything  
19 until you make a relevant request. So you know, it cuts  
20 both ways.

21 MR. MILLER: We've suggested --

22 THE COURT: And have any proportionality rules,  
23 you know, you are -- you're certifying that it's not  
24 disproportionate. So that's --

25 MR. ROLLINSON: I understand we're down there on



1 the spectrum. I'll just note on 29, we did limit it, you  
2 know, in terms of the communications to subjects.

3 THE COURT: Limited is fine, if it's limited to  
4 the, you know, to what's an issue in the case or what may be  
5 an issue in the case.

6 MR. ROLLINSON: You know, all I'll say is that if  
7 I look at their requests, which they attached their letter  
8 of late last night --

9 THE COURT: I didn't look at it.

10 MR. ROLLINSON: -- Request Number 48 says, "Any  
11 and all communications between Stanley Shapiro and Paul  
12 Koningsberg," without time, without subject, so what's good  
13 for the goose.

14 THE COURT: Well, how about if you both temper  
15 what you're looking for? The fact that he asked for it,  
16 doesn't make it right.

17 MR. ROLLINSON: I agree, Your Honor.

18 THE COURT: And I hope I'll be consistent when you  
19 object, all right? I can't promise, but --

20 MR. ROLLINSON: But we'll, Your Honor --

21 THE COURT: So do you want me to adjourn this?

22 MR. ROLLINSON: Yeah, I don't think you have to do  
23 a date certain. We'll --

24 THE COURT: All right. Why don't you do this? If  
25 you need another conference, if there are -- you will find

1 the evidence of dispute and there are specific  
2 interrogatories. Thank you for sending me the responses,  
3 but in the future, if there are definitions, I was reading  
4 this, I didn't know what the production portfolio was. I  
5 knew what the splits -- actually I didn't know what that was  
6 compared to the split strike portfolio or account. So at  
7 least send me the definitions of these, okay?

8 MR. ROLLINSON: I -- when the stack got that big,  
9 I stopped.

10 THE COURT: It's okay. It didn't have to be that  
11 big. All right? So see what you can do. Narrow the  
12 dispute. You show him whether it's been answered. You  
13 don't need the answer from five people, if one person who's  
14 knowledge you need answers it, and then they can come back.

15 MR. ROLLINSON: Okay, thank you, Your Honor.

16 THE COURT: Okay. Thank you.

17 MR. MILLER: Thank you, Your Honor.

18 (Whereupon these proceedings were concluded at  
19 3:12 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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Date: February 8, 2017

[& - adv]

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